ATTORNEY'S LIEN FOR SERVICES—SET-OFF OF JUDGMENTS.—Anglo-Saxon judges, as members of the legal profession, have shown an admirable freedom from professional bias and class selfishness in dealing with questions involving the rights and privileges of members of their profession. With every opportunity offered for treating lawyers as a favored class, they have been able to maintain a detached and objective attitude toward them. Indeed, the courts seem to have preferred to be charged with excessive severity in dealing with their brethren of the bar rather than give the slightest ground for suspicion that they were capitalizing their power in the interest of the legal fraternity.

A familiar example of the struggle to do absolute justice in regard to professional claims occurs in connection with the attorney's charging lien for services, and a recent case in the New York Court of Appeals presents an interesting application of the problem. *Beecher* v. *Peter A. Vogt Mfg. Co.* (N. Y., 1920) 125 N. E. 831. In this case the Vogt Company recovered a judgment against Beecher and Smith, and thereupon Beecher and Smith undertook to use a judgment against the Vogt Company which they had obtained by assignment, as a set-off against this obligation. The Vogt Company was insolvent, and the attorneys for that company, who had not been paid for their services in obtaining the judgment, claimed a lien on the judgment superior to the set-off. And the question was, whether the whole of the Vogt judgment against Beecher and Smith could be neutralized by the set-off of the cross judgment, or only the balance over and above the lien held by the attorneys who obtained it for the Vogt Company.

As an abstract question of right, it seems unreasonable to hold that the lien of the attorney should depend, and more than other liens depend, upon the subsequent conduct of other persons. If the attorney has a valid claim upon a judgment for his fees and expenses, why should this claim be destroyed without his consent or participation? This view was stated and adopted by the Court of King's Bench in 1791 in the case of *Mitchell* v.

1076. Approved Nov. 7, 1911. 1912, c. 715, sec. 10, p. 792, declared unconstitutional in *Salisbury L. & I. Co.* v. *Massachusetts*, 215 Mass. 371, 46 L. R. A. (N. S.) 1196. *Ibid.*, 1914, p. 1057. resolution to amend passed senate and house 1914. To be submitted to legislature of 1915. (No further record). *N. J.*, Const., Art. IV, sec. 9, amendment rejected Oct. 19, 1914. 1915 sp. c. 2, p. 894. *N. Y.*, Const., Art. I, amendment secs. 6 and 7. See 1910, v. 2, p. 2049: 1911, v. 3, appendix p. 4: 1912, v. 2, p. 1381: 1913, v. 3, p. 2224: 1913, v. 4, p. 2491. Adopted Nov. 4, 1913. See 1914, v. 3, p. 2371. Proposed amendment to same section, 1917, v. 3, p. 2783: 1918, v. 3, p. 2083: 1919 v. 2, p. 1789. To be submitted to people at general election, 1919. *Ibid.*, 1914, v. 2, c. 300, p. 864 (Syracuse); 1915, v. 3, c. 593, p. 1825 (New York City). Repealed by 1915, v. 3, c. 606. Re-enacted 1916, c. 112, p. 268. *Ohio*, 1904, p. 333. (See sec. 10-12th). Const., Art., XVIII, sec. 10, amendment adopted Sept. 3, 1912. *Pa.*, 1907, No. 315, p. 466. Unconstitutional. See *Pennsylvania Mut. L. Ins. Co.* v. *Philadelphia*, 242 Pa. 47. Const., Art. XVIII, sec. 16. 1915, p. 1105. To be submitted to the legislature of 1917. *Oreg.*, 1913, c. 269, p. 508. *R. I.*, Const., Art. XVII, sec. 1, amendment adopted Nov. 7, 1916. *Va.*, 1906, c. 194, p. 317. Code Supp. 1910, p. 661. *Wash.*, 1919, c. 135, p. 382.[Park (Metropolitan) Districts Act.] *Wis.*, Const., Art. XI, amendment sec. 3a: 1909 p. 831: 1911, p. 1121, *id.*, c. 665, p. 1090. Adopted Nov. 5, 1912. Const., Art. XI, amendment sec. 3b: 1911, p. 1114: 1913, p. 1374: *id.* c. 770, p. 1209, at 1213. Defeated Nov. 3, 1914. Reprinted by permission from LOOSE LEAF INDEX TO LEGISLATION, October, 1919.

Oldfield, 4 T. R. 123. But in 1795, the Court of Common Pleas, in *Vaughan* v. *Davies,* 2 H. Bl. 440, without any discussion, held that the attorney's lien could not be allowed to prevent a party from having the full benefit of his set-off. Four years later, in *Hall* v. *Ody,* 2 Bos. & Pul. 28, the *Vaughan Case* was followed with evident reluctance as the "settled practice" of the court, Lord Eldon remarking, "I find it to be the settled practice with much surprise, since it stands in a direct contradiction to the practice of every other court as well as to the principles of justice." But Rook, J., steeling his heart against his legal brethren, thought it was fair enough, since "the attorney looks in the first instance to the personal security of his client, and if beyond that he can get any further security into his hands, it is a mere casual advantage." Lord Eldon was wrong, however, in the statement just quoted, as applied to the Court of Chancery, which, while not free from inconsistencies, seemed to follow the rule of the Common Pleas rather than that of the King's Bench. *Wright* v. *Mudie,* 1 Sim. & S. 226; *Mohawk Bank* v. *Burrows,* 6 John Ch. (N.Y.) 317. The same difficulty arose in the Court of Exchequer, and it was pointed out in *Lane* v. *Pearse,* 12 Price 742, that the practice of that court had been confused with contradictory decisions, but on the merits the judges were inclined to follow the hard rule of the Common Pleas.

The controversy was finally settled by the Rules of Hilary Term, 1832, (Rule 93) providing that the attorney's lien should not be prejudiced by the set-off of a judgment in a different suit, and this doctrine is still followed under the current English Rules and Orders. *David* v. *Rees,* [1904] 2 K. B. 435.

Some of this English judicial history is referred to by the New York Court of Appeals in the case above cited, and the further history of the controversy as it persisted in the early New York decisions, is presented; with the result, however, that the court was able to absolve itself from responsibility for choosing the true rule to be followed by concluding that the attorney's lien had been given the same standing by statute as an equitable assignment of the cause of action or judgment, and as such it was superior to the claim of the set-off.

The prevailing rule in the United States, where the matter is not regulated by statute, recognizes the superior claim of the attorney's lien, thus following the present English practice: *Leavenson* v. *Lafontane,* 3 Kan. 523; *Ward* v. *Watson,* 27 Neb. 768; *Phillips* v. *MacKay,* 54 N. J. L. 319 (fully discussing the history and the merits of the question); *Diehl* v. *Friester,* 37 Ohio St. 473; *Pirie* v. *Harkness,* 3 S. D. 178; *Roberts* v. *Mitchell,* 94 Tenn. 277 (a well considered case); *Currier* v. *Boston & Maine RR. Co.,* 37 N. H. 223; *Renick* v. *Ludington,* 16 W. Va. 378; *Carter* v. *Davis,* 8 Fla. 183; *Stanley* v. *Bouck,* 107 Wis. 225. In many jurisdictions the legislature has come to the assistance of the attorney and expressly given his lien for services priority over executions issued on judgments employed by way of set-off: *Brent* v. *Brent,* 24 Ill. App. 448; *Adams* v. *Lee,* 82 Ind. 587; *Stone* v. *Hyde,* 22 Me. 318. But the old rule of the English Common Pleas is still adhered to in some states,—in a few as a principle appealing to the conscience or conservatism of the court, as in *McDonald* v. *Smith,* 57 Vt. 502, but more

commonly because the legislature has taken the view that the attorney who secured the judgment is entitled to no equity superior to that of his client, and if his client's interest in the judgment is subject to the set-off of another judgment, then the lien of the attorney falls with it: *Lindholm* v. *Itasca Lumber Co.*, 64 Minn. 46; *Langston* v. *Roby*, 68 Ga. 406; *Hurst* v. *Sheets*, 21 Ia. 501; *Ex parte Lehman*, 59 Ala. 631. E. R. S.

INTERNATIONAL RECOGNITION AND THE NATIONAL COURTS.—In the law of nations everything depends upon recognition. A newly organized state may possess all the requisites of *de facto* existence, but it can gain admission to the community of international law only as it is recognized by other states. Even after it has been admitted to the international community it may be virtually outlawed by the refusal of other states to recognize a change in its government. It is through recognition and recognition alone that a *de facto* state becomes and continues an international person and a subject of international law. See BONFILS, MANUEL, [5th ed.], sec. 199; OPPENHEIM, INT. LAW, 2 ed., I, sec. 71; WHEATON, INT. LAW, [Lawrence's 2 ed.], p. 38. Theoretically, perhaps, it may be said that as soon as a *de facto* state comes into existence it enters *ipso facto* into the international community. See HALL, INT. LAW, [7th ed.], secs. 2, 26; RIVIER, PRINCIPES, I, 57; ULLMANN, VOLKERRECHT, sec. 30. But practically it is everywhere admitted that recognition is a prerequisite to the normal and effective exercise of international rights. Moreover, the granting or denial of recognition is within the discretion of each state. Theoretically, it may be urged that a new state or government has a legal right to be recognized and consequently that there is a legal duty of recognition. See BLUNTSCHLI, VOLKERRECHT, secs. 3, 35; HALL, INT. LAW, [7th ed.], secs. 2, 26. But as a practical matter it is generally conceded that there is nothing in the custom of nations which supports the affirmation of such a duty. See BONFILS, MANUEL, [5th ed.], secs. 200, 201; OPPENHEIM, INT. LAW, [2 ed.], I, 71. Cf. NYS, in REVUE DE DROIT INTERNATIONAL, 2e, sér., V, 294; PRADIER-FODERE, TRAITE, I, sec. 1114. "The decision of each individual state, on the vital point of recognition, is thus not only technically and formally, but, in the majority of cases, really final. It cannot be called in question even diplomatically, as may be done with the judgment of a prize court; because, previous to recognition, there are no diplomatic relations between political communities. The judgment of the individual state can thus be disputed only *vi et armis;* and this judgment, be it remarked, extends not only to the facts, but to the law by which these facts are to be measured. Each state is to say, not only whether or not a given community fulfills the requirements of international existence, but is, moreover, left to determine what these requirements are." LORIMER, INSTITUTES OF LAW OF NATIONS, I, 107.

The principle that international personality depends upon recognition has important consequences in our national law. "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." *The Paquette Habana*, (1900)